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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/701,519  | 11/06/2003  | Hugh C. Gardner      | 37,459-01           | 7372             |
| 30184   | 7590        | 09/15/2005           | EXAMINER            |                  |
| MYERS & KAPLAN, INTELLECTUAL PROPERTY LAW, L.L.C.<br>1899 POWERS FERRY ROAD<br>SUITE 310<br>ATLANTA, GA 30339 |             |                      | JUSKA, CHERYL ANN   |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 1771                |                  |

DATE MAILED: 09/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

T. 1)

|                          |                                      |                                       |  |
|--------------------------|--------------------------------------|---------------------------------------|--|
| <b>Interview Summary</b> | <b>Application No.</b><br>10/701,519 | <b>Applicant(s)</b><br>GARDNER ET AL. |  |
|                          | <b>Examiner</b><br>Cheryl Juska      | <b>Art Unit</b><br>1771               |  |

All participants (applicant, applicant's representative, PTO personnel):

- (1) Cheryl Juska. (3) \_\_\_\_\_  
 (2) Steve Wigmore. (4) \_\_\_\_\_

Date of Interview: 07 September 2005.

Type: a) ☒ Telephonic b) ☐ Video Conference  
 c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.  
 If Yes, brief description: \_\_\_\_\_.

Claim(s) discussed: independent claims 1 and 10.

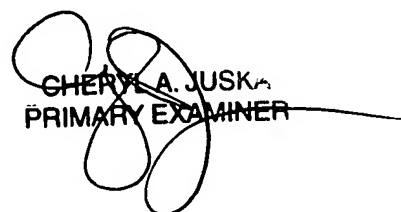
Identification of prior art discussed: Smith '220 and Smith '145.

Agreement with respect to the claims f) ☐ was reached. g) ☒ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

  
 CHERYL A. JUSKA  
 PRIMARY EXAMINER

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

\_\_\_\_\_  
 Examiner's signature, if required



## Summary of Record of Interview Requirements

### Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

#### Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

##### Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

##### 37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,  
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

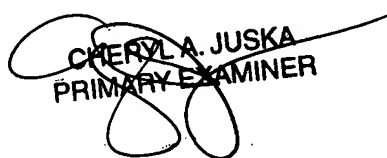
Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

#### Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: We discussed the proposed amendment wherein the carpet backing is limited to a "secondary" carpet backing and the flat weave is limited to a "plain weave" fabric (i.e., subject matter of claim 8). I agreed said amendment would be sufficient to overcome the art rejections set forth in sections 12 and 13 of the last Office Action. However, I noted the rejection based upon Smith '145 would be maintained since the reference clearly teaches the backing is a secondary backing and said backing may be a plain weave fabric. We also discussed the possibility of a 132 Declaration in order to overcome the Smith '145 rejection. Applicant also noted that a terminal disclaimer would be filed to overcome the double patenting rejection and claim 7 would be cancelled in order to overcome the 112, 2nd rejection.

On Thursday, September 8, via email, applicant proposed amending claims 1 and 10 to replace "comprising" with "consisting essentially of" language or alternatively, limiting the secondary backing to a "single uniform layer." I do not agree that either proposed amendment would be sufficient since Smith '145 employs a "conventional secondary backing" for the basis of its inventive modified secondary backing. This suggests that secondary backings of the claimed construction were "conventional" in the art or known prior to the Smith '145 invention.

  
CHERYL A. JUSKA  
PRIMARY EXAMINER

U.S. Application No. 10/701,519  
Title: "Secondary carpet backing and carpets"  
Filed: November 6, 2003  
First Named Inventor: Gardner et al.  
Proposed Claim Amendment  
Examiner Cheryl Juska  
Group Art Unit: 1771  
K&S No. 05485-105011

1. A secondary carpet backing comprising a woven fabric having a flat weave construction of warp tapes and multifilament picks with an average of about 12 to about 24 warp tapes per inch providing 50 to about 100% theoretical warp coverage but less than full effective warp coverage and with an average of about 10 to about 20 multifilament picks per inch, the flat weave construction comprises a plain weave such that the fabric has a weight of about 1.5 to about 7 osy and average air permeability of at least about  $250 \text{ ft}^3/\text{min.}/\text{ft.}^2$ , determined according to ASTM D-737 with a pressure differential equal to 0.5 inch water.

10. A carpet comprising a primary backing structure having a plurality of tufts comprising face yarn extending therefrom on a pile side and a plurality of stitches comprising face yarn disposed on a stitched side opposite the pile side, and a secondary backing laminated to the stitched side with a cured binder, wherein the secondary backing comprises a woven fabric having a flat weave construction of warp tapes and multifilament pick yarns with an average of about 12 to about 24 warp tapes per inch providing 50 to about 100% theoretical warp coverage but less than full effective warp coverage and with an average of about 10 to about 20 multifilament picks per inch, the flat weave construction comprises a plain weave such that the fabric has a weight of about 1.5 to about 7 osy and average air permeability of at least about  $250 \text{ ft}^3/\text{min.}/\text{ft.}^2$ , determined according to ASTM D-737 with a pressure differential equal to 0.5 inch water.

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Group Art Unit: 1771  
K&S No. 05485-105011

1. A secondary carpet backing consisting essentially of ~~comprising~~ a woven fabric having a flat weave construction of warp tapes and multifilament picks with an average of about 12 to about 24 warp tapes per inch providing 50 to about 100% theoretical warp coverage but less than full effective warp coverage and with an average of about 10 to about 20 multifilament picks per inch, the flat weave construction comprises a plain weave such that the fabric has a weight of about 1.5 to about 7 osy and average air permeability of at least about  $250 \text{ ft}^3/\text{min.}/\text{ft.}^2$ , determined according to ASTM D-737 with a pressure differential equal to 0.5 inch water.

10. A carpet ~~comprising~~ consisting essentially of a primary backing structure having a plurality of tufts comprising face yarn extending therefrom on a pile side and a plurality of stitches comprising face yarn disposed on a stitched side opposite the pile side, and a secondary backing laminated to the stitched side with a cured binder, wherein the secondary backing comprises a woven fabric having a flat weave construction of warp tapes and multifilament pick yarns with an average of about 12 to about 24 warp tapes per inch providing 50 to about 100% theoretical warp coverage but less than full effective warp coverage and with an average of about 10 to about 20 multifilament picks per inch, the flat weave construction comprises a plain weave such that the fabric has a weight of about 1.5 to about 7 osy and average air permeability of at least about  $250 \text{ ft}^3/\text{min.}/\text{ft.}^2$ , determined according to ASTM D-737 with a pressure differential equal to 0.5 inch water.